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The Walt Disney Company, et al.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ESPLANADE PRODUCTIONS, INC., a  
Delaware corporation,

13  
14 Plaintiff,

15 v.

16 THE WALT DISNEY COMPANY, a  
Delaware corporation; DISNEY  
ENTERPRISES, INC., a Delaware  
17 corporation; WALT DISNEY PICTURES,  
a California corporation; ABC, INC., a  
18 New York corporation; BUENA VISTA  
HOME ENTERTAINMENT, INC., a  
19 California corporation; DISNEY  
CONSUMER PRODUCTS, INC., a  
20 California corporation; DISNEY  
CONSUMER PRODUCTS AND  
21 INTERACTIVE MEDIA, INC., a  
California corporation; DISNEY BOOK  
22 GROUP, LLC, a Delaware limited liability  
company; BUENA VISTA BOOKS, INC.,  
23 a California corporation; DISNEY  
INTERACTIVE STUDIOS, INC., a  
24 California corporation; DISNEY STORE  
USA, LLC, a Delaware limited liability  
25 company; DISNEY SHOPPING, INC., a  
Delaware corporation; and DOES 1  
26 through 10, inclusive,

27 Defendants.  
28

Case No. 2:17-cv-02185-MWF-JC

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS PLAINTIFF'S  
COMPLAINT**

**Hearing Date:** June 26, 2017

**Hearing Time:** 10:00 a.m.

**Place:** Courtroom 5A

**Judge:** Hon. Michael W. Fitzgerald

**Action Filing Date:** March 21, 2017

1 TO PLAINTIFF ESPLANADE PRODUCTIONS, INC. AND ITS COUNSEL OF  
2 RECORD:

3 PLEASE TAKE NOTICE that on June 26, 2017, at 10:00 a.m., or as soon  
4 thereafter as the matter may be heard, in Courtroom 5A of this Court, located at 350  
5 West First Street, Los Angeles, California 90012, Defendants The Walt Disney  
6 Company, Disney Enterprises, Inc., Walt Disney Pictures, ABC, Inc., Buena Vista  
7 Home Entertainment, Inc., Disney Consumer Products, Inc., Disney Consumer  
8 Products and Interactive Media, Inc., Disney Book Group, LLC, Buena Vista  
9 Books, Inc., Disney Interactive Studios, Inc., Disney Store USA, LLC, and Disney  
10 Shopping, Inc., (collectively, “Defendants”) will appear and move the Court for an  
11 order dismissing with prejudice the claims for relief asserted against them by  
12 Plaintiff Esplanade Productions, Inc. under Rule 12(b)(6) of the Federal Rules of  
13 Civil Procedure. This Motion is made on the grounds that Plaintiff’s Complaint  
14 fails to state a claim upon which relief can be granted.

15 This Motion to Dismiss is made following the conference of counsel  
16 pursuant to Central District Local Rule 7–3, which took place on April 19, 2017.  
17 (*See* Bloom Decl. ¶¶ 2–3.)

18 This Motion is based on the files, records, and proceedings in this action, this  
19 Notice, the following Memorandum of Points and Authorities, the concurrently  
20 filed Declaration of Craig P. Bloom and exhibits thereto, the attached Request for  
21 Judicial Notice, the reply memorandum that Defendants intend to file, the  
22 arguments of counsel, and such other matters as may be presented at the hearing on  
23 this Motion or prior to the Court’s decision.

1 Dated: May 22, 2017

O'MELVENY & MYERS LLP

2  
3 By: /s/ Daniel M. Petrocelli

4 Daniel M. Petrocelli

5 Attorneys for Defendants

6 The Walt Disney Company, et al.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

In March 2016, Defendants began distributing the animated motion picture *Zootopia* (hereafter “*Zootopia*”). *Zootopia* grossed over a billion dollars at box offices worldwide and won an Academy Award for Best Animated Feature Film. In February 2017, nearly a year after *Zootopia*’s release, Plaintiff Esplanade Productions, Inc. applied for a copyright of a synopsis and treatment of a live-action movie called *Looney* (hereafter “*Looney*”) as well as related character descriptions and illustrations. A month after that, Plaintiff filed this lawsuit complaining that *Zootopia* infringed its work. This is just another example in a long history of plaintiffs coming out of the woodwork after a motion picture has achieved critical and financial success to claim credit—and proceeds—where none is due.

To state a claim for copyright infringement in the Ninth Circuit, a plaintiff must demonstrate that the protected elements of the works are substantially similar. Although Plaintiff has refused to provide to Defendants any of the materials purportedly infringed, it is apparent even from the face of the Complaint that *Zootopia* and *Looney* are not substantially similar:

First, Plaintiff’s work<sup>1</sup> is described in the Complaint as a synopsis and treatment for a live-action motion picture entitled *Looney*. *Looney* is facially dissimilar to Defendants’ animated motion picture entitled *Zootopia*. See *Rosenfeld v. Twentieth Century Fox Film*, 2009 WL 212958, at \*2 (C.D. Cal. Jan. 28, 2009) (finding no substantial similarity between interactive live action show and animated movie).

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<sup>1</sup> In practice, a synopsis and treatment amount to little more than a “pitch” of an idea rather than a fully developed work. Plaintiff also alleges that it submitted these “pitch” materials twice: first in 2000 to Mandeville Films (which is neither a named defendant nor related to one) and then again in 2009 to Defendant Walt Disney Pictures. Despite the fact that the Complaint relies entirely on these materials, they were not attached to the Complaint and have not been produced to Defendants.

1 Second, *Looney* is based on a human protagonist who creates a cartoon world  
2 of animated anthropomorphic animals. *Zootopia* is the name of a city in a wholly  
3 fictional world populated by animated anthropomorphic talking animals; there are  
4 no human characters in *Zootopia*.

5 Third, Plaintiff does not claim that *Zootopia*'s main characters are  
6 substantially similar to any one *Looney* character standing alone, and instead relies  
7 on amalgamations of various *Looney* characters' traits that, even in combination,  
8 fail to establish a substantial similarity. None of the main or side characters  
9 compared in Plaintiff's complaint are even of the same species. In addition to  
10 stylistic and artistic differences, Plaintiff's character images are also dissimilar in  
11 that *Zootopia*'s characters wear clothing throughout the motion picture, while  
12 *Looney*'s characters wear no clothing at all.

13 Finally, Plaintiff's allegations fail to sustain a claim that any dialogue is  
14 substantially similar. *Zootopia* runs nearly two hours and contains about 20,000  
15 words of dialogue, yet Plaintiff alleges just one sentence that is similar to the  
16 dialogue in *Looney* and one sentence that resembles a description of one *Looney*  
17 character in the Complaint.

18 Tellingly, Plaintiff has not attached to the Complaint a copy of its synopsis,  
19 treatment or copyright application, thereby preventing both the Court and  
20 Defendants from performing a complete side-by-side comparison. Without  
21 Plaintiff's work, Defendants are left to compare Plaintiff's characterizations of the  
22 pitch materials—as opposed to the content of the materials themselves—with a full-  
23 length motion picture. Even so, Plaintiff's cherry-picked descriptions fail to show  
24 any similarity between *Looney* and *Zootopia*. Perhaps recognizing the stark  
25 differences between the works, Plaintiff alternates between strained comparisons on  
26 the one hand to describing long portions of *Zootopia* without identifying any  
27 substantially similar elements on the other. The latter only underscores the oddity  
28 of Plaintiff not attaching the *Looney* pitch materials to its Complaint in the first



1 place. This Complaint should be dismissed with prejudice.

## 2 **II. BACKGROUND**

### 3 **A. *Zootopia***

4 *Zootopia* is a fully-animated motion picture set in a fictional world populated  
5 entirely by 64 different species of anthropomorphic talking animals. It opens in  
6 Bunnyburrow, a farming suburb where the picture's heroine, Judy Hopps, is  
7 performing in a play about the evolution of animals. (*See* Bloom Decl. Ex. A at  
8 00:01.)<sup>2</sup> Judy, an idealistic, popular, and loyal little bunny, reveals her dream to  
9 make the world a better place by becoming a police officer.

10 Years later, Judy follows her dream by graduating from the Zootopia Police  
11 Department's training academy to become Zootopia's only rabbit officer. (*See id.*  
12 at 00:05.) On her first day, Chief Bogo, a buffalo, assigns Judy to parking duty  
13 instead of giving her the missing-animal assignment the other officers get. (*See id.*  
14 at 00:16.) She is disappointed, but determined to prove herself a capable officer.

15 During her lunch break, Judy sees Nick Wilde, a small-time con-artist fox,  
16 entering an ice cream shop for elephants. (*See id.* at 00:20.) Nick tries to order a  
17 popsicle, but is refused service. Feeling sorry for him, Judy intervenes and pays for  
18 the giant-sized popsicle, but later she sees him melting it down in Sahara Square to  
19 make smaller popsicles for resale. Judy has been scammed.

20 <sup>2</sup> In the concurrently filed Request for Judicial Notice In Support Of  
21 Defendants' Motion To Dismiss, Defendants request that the Court take judicial  
22 notice of a DVD of the motion picture *Zootopia* because Plaintiff refers to it  
23 extensively in the Complaint and its authenticity is undisputable. *See, e.g., Zella v.*  
24 *E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1128 (C.D. Cal. 2007) ("a court may  
25 consider documents which are not physically attached to the complaint but whose  
26 contents are alleged in the complaint and whose authenticity no party questions");  
27 *Gallagher v. Lions Gate Entm't, Inc.*, 2015 WL 12481504, at \*2, n.2 (C.D. Cal.  
28 Sept. 11, 2015) (taking judicial notice of the motion picture *The Cabin in the*  
*Woods*); *Basile v. Twentieth Century Fox Film Corp.*, 2014 WL 12521340, at \*2  
(C.D. Cal. Aug. 19, 2014) (taking judicial notice of allegedly infringing motion  
picture *Prometheus*); *Thomas v. The Walt Disney Co.*, 2008 WL 425647, at \*2, n.1  
(N.D. Cal. Feb. 14, 2008) (taking judicial notice of allegedly infringing motion  
picture *Finding Nemo*).

1 Back at police headquarters, Judy overhears a distressed Mrs. Otterton, an  
2 otter, trying to find her husband. She volunteers to take the case, but without first  
3 consulting Chief Bogo. (*See* Bloom Decl. Ex. A at 00:30.) Rather than fire Judy  
4 for insubordination, though, Chief Bogo makes a deal: either find the missing Mr.  
5 Otterton in 48 hours or resign. Judy enthusiastically accepts.

6 Judy's detective work reveals that Mr. Otterton was last seen with Nick. (*See*  
7 *id.* at 00:35.) Outfoxing Nick at his own game, Judy uses a disguised voice  
8 recorder to get Nick to incriminate himself for tax evasion based on his unreported  
9 sales of popsicles. Upon her promise to give him the recording, Nick grudgingly  
10 agrees to help Judy find the missing otter.

11 Judy and Nick discover a panther named Manchas has been inexplicably  
12 attacked by Mr. Otterton. They find Manchas, severely injured, in the Rainforest  
13 District. (*See id.* at 00:52.) Manchas tells them that Mr. Otterton's disappearance  
14 had something to do with "night howlers," but before they can figure out what that  
15 means, Manchas turns on them and attacks. In the resulting chaos, Judy saves  
16 Nick's life, then handcuffs Manchas and calls in police reinforcements. When  
17 Chief Bogo arrives on the scene, though, Manchas has mysteriously disappeared,  
18 and Judy has no evidence to prove what she just did.

19 Judy and Nick visit Assistant Mayor Bellwether, a sheep, who has access to  
20 Zootopia's surveillance cameras. (*See id.* at 01:01.) Reviewing surveillance  
21 footage, Judy and Nick see that Manchas had been taken by a pack of wolves to the  
22 Cliffside Asylum. Judy deduces that the wolves are the "night howlers."

23 Judy and Nick sneak into the asylum and discover Manchas, Mr. Otterton,  
24 and the other missing Zootopia animals for whom the police had been searching.  
25 (*See id.* at 01:06.) They are shocked to learn that Mayor Lionheart, a lion, is  
26 involved in the abductions. He is arrested, the missing animals are freed, and Judy  
27 becomes the hero cop she always hoped she could be.

28 Later that day, Judy announces to the media that the missing animals were all

1 predators, inadvertently suggesting they are naturally inclined to turn savage. (*See*  
 2 *id.* at 01:11.) Nick, himself a predator, is offended by this, and Judy’s comments  
 3 spread a wave of fear across Zootopia. Although Chief Bogo implores her to stay  
 4 on, Judy resigns and returns to Bunnyburrow. Back home, she learns that a flower  
 5 nicknamed “night howler” can cause animals—both predator and prey alike—to act  
 6 savagely if its pollen enters their system so she realizes that the “night howlers”  
 7 were not wolves, but rather these dangerous flowers. (*See id.* at 01:16.) She races  
 8 back to Zootopia, where she and Nick team up again.

9 Nick and Judy discover a lab where sheep are using “night howlers” to create  
 10 a dangerous blue serum that turns animals savage. (*See id.* at 01:23.) They steal a  
 11 briefcase containing the blue serum, and are pursued and then trapped by a herd of  
 12 sheep. They learn that Bellwether, who has now become mayor, is the mastermind  
 13 behind a scheme to gain political power by driving the mostly “prey” population to  
 14 fear a minority of savage predators. Bellwether shoots Nick with the serum,  
 15 expecting him to turn savage and attack Judy, but Nick and Judy had swapped  
 16 blueberries for the serum and recorded Bellwether admitting to the scheme. Nick  
 17 and Judy emerge unharmed and Bellwether is arrested.

18 Zootopia begins to heal, with prey and predator working together again.  
 19 Judy delivers a speech to Zootopia’s new police cadets, including Nick,  
 20 encouraging them to “try to make the world a better place.” The story closes with  
 21 Judy and Nick as partners, helping to protect Zootopia.

## 22 **B. *Looney***

23 Plaintiff’s Complaint describes *Looney* as a treatment and synopsis for a live-  
 24 action motion picture based on “a human animator who creates a cartoon world of  
 25 animated anthropomorphic animal characters.” (Compl. ¶ 53.) The treatment and  
 26 synopsis were written in or around 2000 by Plaintiff’s Chief Executive Officer,  
 27 Gary L. Goldman. (*Id.* ¶¶ 30–32.) Mr. Goldman also wrote descriptions of  
 28 *Looney*’s main characters, and hired a cartoonist to create visual images of them.

(*Id.*) On February 10, 2017—almost one year after *Zootopia*’s release—Plaintiff filed an application for registration with the U.S. Copyright Office. (*Id.* ¶ 34.) The application apparently contained the *Looney* synopsis and treatment as well as character descriptions and drawings now entitled “Zootopia.” (*Id.*)

*Looney* is the story of a human animator and his animated work. (*Id.* ¶ 70.) The animator is a young and uncool kid living in a small town with his parents. (*Id.* ¶ 72.) As a child, the animator is bullied by a bigger, stronger, and mean kid. (*Id.*) Although the animator’s parents discourage him from achieving certain career aspirations, he attends college, where he excels, achieves recognition, and earns an opportunity to go to the city for his dream job. (*Id.* ¶¶ 56, 72.) Plaintiff makes no reference to an animated heroine.

In the city, the animator comes up against a strong, powerful, and entrenched boss who wants to maintain control over him. (*Id.* ¶ 73.) The animator is obsessed with his work and goes to extreme lengths in pursuit of success, even taking principled stances in defiance of his boss. (*Id.*) He partners with another character, who helps him achieve success by solving a problem with characters in an unidentified, generic asylum. (*Id.* ¶ 73.) Eventually, success goes to the animator’s head, and he publicly offends others, alienates his partner, and shows his own prejudices. (*Id.*) The animator loses his job, and is unable to complete an important project. (*Id.*)

The animator leaves the city and returns to his hometown to live and work with his parents. (*Id.* ¶ 74.) He re-encounters the childhood bully, who has overcome his prejudices and turned into a good person. (*Id.*) The animator learns how to overcome his own prejudices, reconciles with his partner, and finishes the project. (*Id.* ¶¶ 74–75.)

### III. LEGAL STANDARD

To avoid dismissal under Fed. R. Civ. P. 12(b)(6), a complaint must be plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plausibility

1 requires “more than a sheer possibility” of unlawful conduct. *Id.* Factual  
 2 allegations must go beyond “labels and conclusions, and a formulaic recitation of  
 3 the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
 4 544, 555 (2007).

#### 5 **IV. PLAINTIFF FAILS TO STATE A CLAIM FOR COPYRIGHT** 6 **INFRINGEMENT**

7 To state a claim for copyright infringement, a plaintiff must demonstrate that  
 8 “the works at issues are substantially similar in their protected elements.” *Zella*,  
 9 529 F. Supp. 2d at 1133 (citing *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822  
 10 (9th Cir. 2002)). Courts apply the “extrinsic test” to assess substantial similarity on  
 11 a motion to dismiss. *Id.* (citing *Funky Films, Inc. v. Time Warner Entm’t Co.*, 462  
 12 F.3d 1072, 1077 (9th Cir. 2006)). This extrinsic test need not await discovery and  
 13 summary judgment. *Id.* The test involves an objective analysis of specific  
 14 expressive elements of each work that “focuses on articulable similarities between  
 15 the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events.”  
 16 *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir. 1994).  
 17 Courts inquire only whether “protectable elements, standing alone, are substantially  
 18 similar.” *Cavalier*, 297 F.3d at 822. Non-protectable elements in the form of  
 19 “general plot ideas,” “stock scenes and themes,” and “scenes-a-faire [involving]  
 20 situations and incidents that flow necessarily or naturally from a basic plot premise”  
 21 therefore must be “filter[ed] out and disregard[ed].” *Id.* at 822–23. “[N]o amount  
 22 of proof of access will suffice to show copying if there are no similarities.” *Segal v.*  
 23 *Rogue Pictures*, 544 Fed. Appx. 769, 770 (9th Cir. 2013).

#### 24 **1. Plot and Sequence of Events**

25 *Looney* and *Zootopia* are unique to each and dissimilar to each other. *Looney*  
 26 is a treatment and synopsis for a live-action picture about the struggles and growth  
 27 of a male human animator who creates a world of animated characters. (Compl. ¶¶  
 28 53, 70, 72.) *Zootopia* is an animated motion picture about a bunny protagonist who

1 interacts only with anthropomorphic talking animals. There are no humans, and  
2 there is no live-action component.

3 In *Rosenfeld*, the plaintiff claimed copyright infringement by the defendants’  
4 animated motion picture *ROBOTS*. 2009 WL 212958. The court dismissed,  
5 holding that the works were not substantially similar because the plaintiff’s  
6 screenplay involved a live-action component and featured human characters. *Id.* at  
7 \*2–3. Like the screenplay in *Rosenfeld*, Plaintiff’s treatment and synopsis are for a  
8 live-action motion picture featuring human characters. This is facially different  
9 from Defendants’ fully animated motion picture.

10 To demonstrate substantial similarity of two plots, the plaintiff “must show  
11 similarities of expressions in . . . specific details rather than allege similarities of  
12 general plot ideas.” *Buggs v. Dreamworks, Inc.*, 2010 WL 5790251, at \*5 (C.D.  
13 Cal. Dec. 28, 2010); *see also Thomas*, 2008 WL 425647, at \*3 (“basic plot ideas are  
14 not protected by copyright law”). Beyond the fundamental differences in the type  
15 of motion picture Plaintiff intended its project to be, Plaintiff fails to plead plot  
16 similarities that are protected by copyright law.

17 Plaintiff has clearly conformed the description of its *Looney* synopsis and  
18 treatment in the Complaint to Defendants’ motion picture *Zootopia* in an effort to  
19 manufacture similarities between them. Without a synopsis and treatment being  
20 attached to the Complaint, however, the Court is left to compare a finished motion  
21 picture with the bare elements Plaintiff has chosen to plead. The potential for  
22 drawing comparisons where none actually exist is exacerbated by the Complaint’s  
23 descriptions of the *Zootopia* characters and plotline without any specific allegation  
24 that the *Looney* synopsis and treatment specifically contain similar elements.  
25 (Compl. ¶¶ 63–76.) Even when the Plaintiff does make actual comparisons,  
26 Plaintiff only pleads similarity of high-level ideas such as plots involving “young,  
27 uncool heroes who live in small towns with their parents.” (*Id.* ¶ 72.) Plaintiff  
28 obscures but ultimately admits that its hero is a human animator in a live-action



1 picture<sup>3</sup> whereas the *Zootopia* hero is an animated bunny living in an animated  
 2 world. Plaintiff's allegations really only describe a buddy movie that features two  
 3 contrasting protagonists who partner to solve a problem in the face of adversity,  
 4 precisely the kind of "basic plot idea" that courts have consistently dismissed as  
 5 unprotected. For example, in *Mandeville-Anthony v. Walt Disney Co.*, the plaintiff  
 6 claimed copyright infringement based on the defendants' animated motion picture  
 7 *Cars*. 2012 WL 4017785 (C.D. Cal. July 28, 2012). The court rejected the  
 8 plaintiff's assertion that the plots were substantially similar based on the fact that  
 9 both involved "anthropomorphic cars . . . with the backdrop of a race." *Id.* at \*2.  
 10 The court held that such basic plot ideas are not protected, and dismissed the case.  
 11 *Id.* Likewise, in *Thomas*, the plaintiff claimed copyright infringement based on the  
 12 defendants' animated motion picture *Finding Nemo*. 2008 WL 425647. The court  
 13 held as unprotected the basic plot idea of "young fish in the ocean that are captured  
 14 by divers and put in a fish tank." *Id.* at \*3.

15 Plaintiff's *Looney* plot idea of two characters solving a problem in the face of  
 16 adversity is basic and unprotected. That the heroes "go to the big city for their  
 17 dream jobs," "have partners who help them achieve success," and "overcome their  
 18 own internal prejudices" in order to complete an "unfinished project," (*Id.* ¶¶ 72–  
 19 75,) are no substitute for what the pleading standard requires. *See, e.g., Basile v.*  
 20 *Warner Bros. Entm't, Inc.*, 2016 WL 5867432, at \*6 (C.D. Cal. Jan. 1, 2016)  
 21 (dismissing copyright infringement claims and holding as unprotected the basic plot  
 22 idea of "a humble hero with a previously unknown powerful ancestry who learns  
 23 his true identity and must save his home planet"); *Gallagher*, 2015 WL 12481504,  
 24 at \*4 (dismissing copyright infringement claims and holding as unprotected the  
 25 basic plot idea of "students travelling to remote locations and subsequently being

26 <sup>3</sup> Plaintiff's failure to attach to the Complaint a copy of its *Looney* synopsis  
 27 and treatment has obscured the precise nature of *Looney*'s story, but Defendants  
 28 deduce from the sparse allegations that *Looney*'s hero is actually a human animator.

1 murdered”); *Basile*, 2014 WL 12521340, at \*6 (dismissing copyright infringement  
2 claims and holding as unprotected the “vague element of creation of some type of  
3 life in each work”); *Campbell v. Walt Disney Co.*, 718 F. Supp. 2d 1108, 1112  
4 (N.D. Cal. 2010) (dismissing copyright infringement claims against Disney based  
5 on the animated motion picture *Cars* and holding as unprotected the basic plot idea  
6 of “a cocky young race-car driver . . . who learns life lessons from an older  
7 mentor”); *Rosenfeld*, 2009 WL 212958, at \*3 (dismissing copyright infringement  
8 claims based on the animated motion picture *ROBOTS* and holding as unprotected  
9 the basic plot idea of “efforts to replace humans [with robots]”). Nor are these  
10 events even comparable to *Zootopia* in which there is no “unfinished project.”

11 Plaintiff’s claim that “concrete [plot] elements” were “copied” fares no better  
12 than its stock general similarities. (Compl. ¶ 72.) First, Plaintiff’s plotline  
13 regarding the human animator can bear no possible resemblance to *Zootopia*  
14 because the latter contains no human characters. *See, e.g., Rosenfeld*, 2009 WL  
15 212958, at \*2 (distinguishing the plot of plaintiff’s work from that of defendants’  
16 work because the defendants’ picture “by contrast, has no human characters at all”);  
17 *Campbell*, 718 F. Supp. 2d at 1115 (“As an initial matter, the Court recognizes that  
18 [the plaintiff’s work] involves human characters whereas [the defendants’ work]  
19 involves animated automobile characters”). Second, even assuming that Plaintiff’s  
20 plotline regarding the human animator could somehow be compared to *Zootopia*, it  
21 is clear that no substantial similarities exist. For example, Plaintiff complains that  
22 *Looney* is substantially similar to *Zootopia* because both involve characters who  
23 “go to academies where they excel, achieve recognition for their work, and earn the  
24 opportunity to go to the big city for their dream job.” (Compl. ¶ 72.) However,  
25 *Looney*’s character attends college, while *Zootopia*’s heroine Judy attends a police  
26 training academy to become a police officer. (*Id.* ¶ 56.) The allegations therefore  
27 fall well short of demonstrating any similarity—let alone substantial—because the  
28 underlying plots are profoundly different.



1 Plaintiff further alleges that substantial similarity exists because characters in  
 2 both works “come up against strong, powerful, and entrenched bosses who want to  
 3 maintain control over” them. (*Id.* ¶ 73.) Judy’s boss, Bogo, is the chief of a major  
 4 metropolitan police department and the “control” asserted over Judy involves  
 5 initially withholding assignment of a desirable police-related task that is later given  
 6 to her. Nor does Judy “take[] principled stances in defiance of” Bogo as Plaintiff  
 7 contends. (*Id.* ¶ 72.) Plaintiff includes no allegations in its Complaint describing  
 8 the animator’s boss or the nature of “control” that he asserts. Plaintiff also claims  
 9 substantial similarity based on the fact that characters in *Looney* and *Zootopia*  
 10 “encounter their former bullies . . . [and] learn from [them] to overcome their own  
 11 internal prejudices and appreciate their former partners.” (*Id.* ¶ 74.) In *Zootopia*,  
 12 there are several scenes that involve a predator animal bullying a prey animal (or  
 13 vice-a-versa) to illustrate the theme of bias and prejudice between different species.  
 14 Plaintiff’s allegations describe the bullying in *Looney* only as occurring “in private  
 15 male-only rooms.” (*Id.* ¶ 56.)

16 Finally, Plaintiff alleges similarity because the characters in both works  
 17 “must solve a problem with the madness of out-of-control *Zootopia* characters in an  
 18 asylum.” (*Id.* ¶ 75.) However, Plaintiff fails to allege any specific similarities  
 19 regarding the nature of the problem, how the characters ended up in an asylum, or  
 20 the way in which the heroes eventually solved the problem. In *Zootopia*, Judy and  
 21 Nick uncover a problem involving civilized predators suddenly returning to their  
 22 savage and instinctual states. They learn that those animals were missing because  
 23 they had been forcibly brought to an asylum to shield their savage drug-induced  
 24 condition from the public. Judy and Nick discover that the problem is derived from  
 25 the effects of psychedelic plants, track down the antagonist responsible for the  
 26 scheme, and trick her into admitting guilt. Plaintiff offers three sentences with  
 27 absolutely no detail of the problem purportedly solved in *Looney*. This failure to  
 28 provide any substance is no accident; Plaintiff in its Complaint took liberties in

1 drawing connections between even the most remote of themes and concepts. Here,  
 2 Plaintiff's failure to provide any description of why the problems solved in *Looney*  
 3 were substantially similar to *Zootopia* shows that not even remote comparisons  
 4 could be made because *Zootopia* is fundamentally different from *Looney*.

## 5 **2. Characters, Artwork, and Merchandise**

6 Plaintiff asserts that the ensemble of characters in *Looney* is substantially  
 7 similar to the ensemble in *Zootopia* because both ensembles "represent[] a diverse  
 8 ethnic and cultural society . . . with a multi-tiered class and power structure  
 9 constituted by animals of different species from different places with different  
 10 natures, sizes, strengths, psychologies, and philosophies." (Compl. ¶ 64.) In other  
 11 words, Plaintiff claims similarity based on the simple fact that both sets of  
 12 characters exemplify a "model of society." (*Id.*) No one can claim a legal  
 13 monopoly on a cast of characters representing America's melting pot.

14 Characters that "naturally flow from a basic plot idea are scenes-a-faire not  
 15 protected by copyright." *Campbell*, 718 F. Supp. 2d at 1115. *Zootopia* is based  
 16 entirely on animated anthropomorphic animal characters living and working in a  
 17 modern, civilized society, whereas *Looney* allegedly involves a mix of animal and  
 18 human characters. The use of different animal species naturally flows from these  
 19 ideas. *See Thomas*, 2008 WL 425647, at \*5 ("the fact that both [characters] are  
 20 talking fish directly flows from the idea of a young fish discovering the ocean").  
 21 That characters are animated anthropomorphic animals does not by itself transform  
 22 a generic cast into a copyrightable expression. The mere use of animated animals  
 23 in motion pictures is unprotected by copyright law and cannot sustain a claim of  
 24 substantial similarity. *See, e.g., Mandeville-Anthony*, 2012 WL 4017785, at \*3  
 25 (holding as unprotected the idea of animated, anthropomorphic car characters  
 26 because "[f]or decades, cartoons have featured real-life objects that can talk and  
 27 have personalities"); *Cory Van Rijn, Inc. v. Cal. Raisin Advisory Bd.*, 697 F. Supp.  
 28 1136, 1144 (E.D. Cal. 1987) (holding as unprotected the "common idea of an

1 anthropomorphic raisin”).

2 Plaintiff also claims that certain “main” and “side” characters in *Zootopia* are  
 3 substantially similar to those in *Looney*. (Compl. ¶¶ 66–69.) The general rule is  
 4 that characters “are not afforded copyright protection” unless they are “especially  
 5 distinctive.” *Gallagher*, 2015 WL 12481504, at \*7; *see also Shame on You Prods.,*  
 6 *Inc. v. Banks*, 120 F. Supp. 3d 1123, 1164 (C.D. Cal. 2015) (holding that “[o]nly  
 7 distinctive characters are protectable, not characters that merely embody  
 8 unprotected ideas”). Character traits that “flow naturally from the works’ shared  
 9 premises” may not serve as a basis for infringement. *Gallagher*, 2015 WL  
 10 12481504, at \*7. Nor can substantial similarity be based on “shared attributes of  
 11 appearance and general demeanor that are generic and common.” *Id.*

12 As a threshold matter, it is unclear from the Complaint whether there even  
 13 exists an animated protagonist character in the *Looney* materials. The animated  
 14 characters that are described as similar to the main characters of *Zootopia* are not  
 15 even alleged to be primary characters. Instead, *Looney* appears to be principally  
 16 about the trials and tribulations of a human animator.

17 a. Defendants’ Character Judy and Plaintiff’s Characters Mimi and Hugo

18 Plaintiff alleges that Judy Hopps’s characteristics are substantially similar to  
 19 those of its Mimi and Hugo. (Compl. ¶ 66.) That Plaintiff combines the traits of  
 20 two different characters is telling; it shows that Judy is not—and cannot be—  
 21 substantially similar to any one of Plaintiff’s characters standing alone. Defendants  
 22 are aware of no cases in which a court found substantial similarity based solely on a  
 23 composite of traits drawn from multiple characters.

24 Plaintiff’s attempt at comparing *Looney*’s characters with Judy, the main  
 25 character in *Zootopia*, is written in a highly confusing manner that obscures a  
 26 critical distinction between the plots and the main characters. (Compl. ¶ 66.)  
 27 Plaintiff starts out by describing Mimi as a squirrel and concludes that Mimi and  
 28 Judy are “visually similar” because both are “small, furry, ‘cute’ prey animals with

big eyes and oversized appendages.” (Compl. ¶ 66.) Plaintiff does not, however, allege that Mimi, *like Judy*, is the (or even *a*) main character, much less the heroine. In fact, Mimi appears to be a minor character; Plaintiff compares her to Judy simply because both are small female animals. Plaintiff then pivots in the same paragraph from describing Mimi to proposing—without even describing—comparisons with Hugo. The Complaint is unclear as to whether Hugo is the protagonist of *Looney* and conspicuously avoids providing any description, image, or detail about him. Even if Hugo were the protagonist, he appears to be a live-action, human, male protagonist. Indeed, much of Plaintiff’s Complaint simply describes generic characteristics of *Zootopia*’s protagonist and intimates that *Looney*’s protagonist shares these characteristics without making any actual comparisons. Descriptions of *Zootopia* with no actual comparisons to *Looney*, of course, do not support allegations of substantial similarity.

Even if we were to assume that Mimi and Hugo together have the same characteristics as Judy, they are stock and unprotectable characteristics. For example, Plaintiff alleges that Judy is (i) “an outsider” who is “underestimated, unappreciated, and not taken seriously,” (ii) “an underdog” who is “brave, energetic, determined, and enthusiastic,” (iii) “help[ful],” (iv) “good natured, kindhearted, and constantly trying to improve herself and others,” and (v) “naively idealistic and optimistic.”<sup>4</sup> (*Id.*) Each of these vague characteristics falls short of being “distinctive” under copyright law. *See, e.g., Campbell*, 718 F. Supp. 2d at 1115 (“[T]he characters generically labeled in the Complaint as a ‘cocky kid’ and an ‘older mentor’ are not protected by copyright law”); *DuckHole Inc. v. NBC Universal Media LLC*, 2013 WL 5797279, at \*9 (C.D. Cal. Sept. 6, 2013) (“Being

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<sup>4</sup> Plaintiff also describes Judy as “uncool” and having been “bullied by a bigger, stronger, and mean kid.” (Compl. ¶ 72.) To the contrary, Judy is depicted as popular. Nor is she bullied; she rather heroically defends others from bullying and is assaulted for it.

smart and ethnic are not protectable elements.”); *Rosenfeld*, 2009 WL 212958, at \*3 (“The Court finds similarly unconvincing the other random similarities that Plaintiffs point to, such as the fact that the heroes are young males with blonde girlfriends”); *Gallagher*, 2015 WL 12481504, at \*8 (“The fact [that the characters] are both ‘bubbly’ is irrelevant because such characters are *scenes a faire*”).

The Court should also reject Plaintiff’s assertion that Judy’s appearance is substantially similar to Mimi’s because both are “small, furry, ‘cute’ prey animals with big eyes and oversized appendages.” (Compl. ¶ 66.) If Plaintiff were entitled to a copyright on small, furry prey animals, “there would be few works [involving animated anthropomorphic animal characters] that do not infringe upon that common casting type.” *Gallagher*, 2015 WL 12481504, at \*8. But it is altogether clear that the characters are, in fact, different. Judy is a rabbit; Mimi is a squirrel. Judy is shown wearing a police officer’s uniform; Mimi wears no clothing at all. Judy is a complex three-dimensional, full color, computer-animated character; Mimi is a two-dimensional hand drawing. No reasonable juror could view these two characters and conclude that they are substantially similar. *See Silberstein v. John Does*, 242 F. App’x 720, 722 (2d Cir. 2007) (holding that no reasonable juror could find substantial similarity between plaintiff’s “crudely drawn two-dimensional, monochromatic, static character” and defendants’ “three dimension[al]” character “rendered in lifelike detail and realistic color and shade”).

*b. Defendants’ Character Nick and Plaintiff’s Characters Roscoe and Monty*

Similarly, Plaintiff alleges that Nick’s characteristics are substantially similar to an amalgamation of Roscoe and Monty in *Looney*, but provides no description of what these similarities are supposed to be. Much like its failure to provide any facts about Hugo, Plaintiff omits any detail or description of Monty (who could also be human). Moreover, as noted above, Plaintiff’s reliance on the combination of two different characters by itself shows that Nick is not substantially similar to any one character standing alone. And even if it is assumed that Plaintiff’s description of

1 Nick also applies to its *Looney* characters, there is still no substantial similarity  
 2 because the described traits are stock and unprotectable. Plaintiff alleges that Nick  
 3 (i) “is an outcast,” a “victim of prejudice,” and “an underdog,” (ii) “is a pessimist  
 4 who embodies and expresses the cynical view of the world,” (iii) “has a bad  
 5 attitude, and is determined not to seek the approval of those who disdain him,” and  
 6 (iv) “is uncouth and brutally honest.” (Compl. ¶ 67.) None of these traits are  
 7 protected under copyright law. *See Thomas*, 2008 WL 425647, at \*5 (“[A] young  
 8 character who is inquisitive and whose curiosity leads him or her into danger can be  
 9 considered a stock character”). Many of them flow from the fact that the character  
 10 is a fox, a carnivorous animal well known for its cunning. *Mandeville-Anthony*,  
 11 2012 WL 4017785, at \*3 (“The idea that some of the respective car characters share  
 12 attributes that flow from their make and country of origin also tends against  
 13 plaintiff’s claim.”).

14 Plaintiff also asserts that Nick is “visually similar” to Roscoe because both  
 15 are “dog-like predators who appear sly, cynical, and untrustworthy.” (Compl. ¶  
 16 67.) But Plaintiff cannot claim a “property interest in a stereotyped character[],”  
 17 such as a “sly” and “untrustworthy” fox. *Mandeville-Anthony*, 2012 WL 4017785,  
 18 at \*3. The characters are completely dissimilar. Nick is a fox; Roscoe is a hyena.  
 19 Nick wears clothes (pants, shirt, and tie); Roscoe wears no clothes whatsoever.  
 20 And Nick, like Judy and unlike Roscoe, is animated in three dimensions. Plaintiff  
 21 does not even suggest any other similarities exist. Like the characters in  
 22 *Mandeville-Anthony*, the characters here are not substantially similar because the  
 23 *Zootopia* character is an entirely different animal species from the two *Looney*  
 24 characters and wears clothing.

25 *c. Defendants’ Character Bellwether and Plaintiff’s Characters Ms. Quilty*  
 26 *and Fuzz*

27 Plaintiff again relies on an amalgamation of two characters, alleging without  
 28 more that Bellwether’s characteristics are similar to those of Ms. Quilty and Fuzz,



1 and omitting anything about what those latter characteristics are. Absolutely no  
 2 information is provided about Fuzz, who appears likely to be a human character.  
 3 Instead, Plaintiff states—without making any actual comparisons to *Looney*—that  
 4 Bellwether is (i) “unattractive and seemingly prissy, but at the same time vain,” (ii)  
 5 “a little Napoleon who is consumed with unbridled ambition,” and (iii) “a prey  
 6 animal who wants to challenge” others (Compl. ¶ 68,), characteristics too general  
 7 and vague for copyright protection. *See Gallagher*, 2015 WL 12481504, at \*8–9  
 8 (holding as unprotected such characteristics as “spoiled rich girl,” “bubbly,”  
 9 “strong,” and “quirky”). Plaintiff also claims that Bellwether is “visually similar”  
 10 to Ms. Quilty because both “are passive, meek, and vulnerable prey animals with  
 11 . . . big eyes and hair piled high on their heads,” (Compl. ¶ 68,) but these attributes  
 12 flow from the fact that Bellwether is a sheep, and Plaintiff cannot claim a monopoly  
 13 over “stereotyped characters.” *Mandeville-Anthony*, 2012 WL 4017785, at \*3.  
 14 Moreover, even on the face of the Complaint, the characters are plainly different.  
 15 Bellwether is a sheep; Ms. Quilty is an ostrich. Bellwether wears a dress and  
 16 eyeglasses; Ms. Quilty wears nothing. And like Nick and Judy, Bellwether is  
 17 animated in three dimensions. These characters are entirely different both in terms  
 18 of their characteristics and appearance. *See Thomas*, 2008 WL 425647, at \*5  
 19 (finding no substantial similarities between “orange clownfish with wide eyes and  
 20 white stripes” and “tiny yellow fish”).

21 *d. Side Characters*

22 Plaintiff claims that Bogo is visually and characteristically similar to Griz  
 23 because both are (i) “big, strong, intimidating, and ‘grizzled,’” and (ii) “see  
 24 themselves as natural leaders.” (Compl. ¶ 69(a).) But Bogo is a Cape buffalo with  
 25 horns on his head whereas Griz is a bear. Bogo is shown wearing a police chief’s  
 26 uniform whereas Griz wears no clothing. Bogo is animated in three dimensions  
 27 whereas Griz is two-dimensional. The attributes that Plaintiff claims are similar—  
 28 “big, strong, [and] intimidating”—simply describe the actual appearance of a bear

1 and a Cape buffalo with no protectable element.

2 Plaintiff claims that another side *Zootopia* character, Yax, is similar to its  
 3 Max because both are (i) “tall, horned, Asian mountain animals with similar  
 4 names,” and (ii) “the proprietors of a club with a similar name.” (Compl. ¶ 69(b).)  
 5 Actually, these characters are factually distinct. Yax is an ordinary yak; Max is an  
 6 Asian mountain goat. Yax has dreadlocks and wears a beaded necklace; Max has  
 7 neither. Yax, like Boggo, is animated in three dimensions. The fact that both are  
 8 allegedly “tall” and “horned” is immaterial because those traits merely describe the  
 9 animals’ appearances. That both characters have similarly sounding names is  
 10 irrelevant; “similar sounding names . . . cannot suffice to find substantial  
 11 similarity.” *Gallagher*, 2015 WL 12481504, at \*8. And Plaintiff mischaracterizes  
 12 Yax’s role; he is not the “proprietor” of a club, but rather works there as a front-  
 13 desk employee.

14 Plaintiff claims that another side character, Gazelle, is similar visually and  
 15 characteristically to its Cha because both are “Latin female characters, in the bodies  
 16 of African animals, who are ostensibly attractive and function as performers and  
 17 sex symbols.”<sup>5</sup> (Compl. ¶ 69(c).) Yet again, these characters are patently  
 18 dissimilar. Gazelle is a gazelle; Cha is a cheetah. Gazelle is a prey animal; Cha is a  
 19 predator. The difference between predator and prey is a critical element in  
 20 *Zootopia* and Plaintiff entirely ignores this distinction, instead focusing on the  
 21 erroneous assumption that cheetahs and gazelles must be African animals. Gazelle  
 22 wears clothes (dress, high heels, and a top); Cha wear no clothes at all. And  
 23 Gazelle is animated in three dimensions.

### 24 3. Dialogue and Title

25 “In order to support a claim of substantial similarity based on dialogue,

26 <sup>5</sup> Plaintiff’s claim that Gazelle is a “sex symbol” is wrong. She is actually  
 27 portrayed in *Zootopia* as a popular singer who also provides comic relief. This is  
 28 another stretch at imagining similarities where none exist.



1 ‘extended similarity of dialogue’ must be demonstrated.” *Gallagher*, 2015 WL  
 2 12481504, at \*10 (citing *Olson v. Nat’l Broad. Co.*, 855 F.2d 1446, 1450 (9th Cir.  
 3 1988)). *Zootopia* runs 108 minutes and the soundtrack contains about 20,000  
 4 words of dialogue, (*see* Bloom Decl. Ex. A)—yet Plaintiff can point to just one  
 5 sentence even partly similar to the dialogue in its work and one other sentence that  
 6 resembles not even dialogue but rather only its character description for Roscoe.  
 7 (Compl. ¶¶ 60–61.) *See Gallagher*, 2015 WL 12481504, at \*10 (holding that “a  
 8 mere three sentences taken from a 302-page book compared to three sentences from  
 9 a 90-minute motion picture falls far short of the ‘extended similarity’ required for a  
 10 finding of substantial similarity for dialogue”). Plaintiff’s claim also fails because  
 11 it asserts similarity based on an ordinary phrase: “[h]e has no hope that he can  
 12 change or improve; or that anyone else can change or improve.” (Compl. ¶ 61.)  
 13 “[O]rdinary words and phrases are not entitled to copyright protection.” *Gallagher*,  
 14 2015 WL 12481504, at \*10. Two partially similar sentences constituting ordinary  
 15 phrases do not remotely meet the extended-similarity requirement.

16 Plaintiff’s claim based on Defendants’ use of the word “Zootopia” is also  
 17 unavailing. First, Plaintiff does not even allege a single sentence of dialogue  
 18 containing the word “Zootopia.” Nor has the Plaintiff attached its synopsis and  
 19 treatment showing how the word is used. In Defendants’ animated motion picture,  
 20 “Zootopia” refers to the name of the city in which different animal species live.  
 21 This is consistent with how the word has been applied in other real-world contexts.  
 22 For example, since at least 2012, the name “Zootopia” has been associated with a  
 23 zoo in Denmark.<sup>6</sup> And it has been used since 1999 as the name of a New York area  
 24

25  
 26 <sup>6</sup> Becky Quintal, *BIG Unveils Design For “Zootopia” in Denmark*, THE ARCH  
 27 DAILY (July 29, 2014), [http://www.archdaily.com/532248/big-unveils-design-for-](http://www.archdaily.com/532248/big-unveils-design-for-zootopia-in-denmark)  
 28 [zootopia-in-denmark](http://www.archdaily.com/532248/big-unveils-design-for-zootopia-in-denmark) (“The firm has been working for the past two years to make  
 Zootopia what the Danish press is calling ‘the world’s most advanced zoo.’”).

1 radio station's annual concert series.<sup>7</sup> Plaintiff's insinuation that it alone created  
 2 and coined the term is flatly wrong. Anyway, as Plaintiff readily admits, "[t]itles  
 3 . . . [are] not independently copyrightable." (Compl. ¶ 80.)

#### 4 **4. Themes**

5 Stock themes are not protected by copyright law. *See, e.g., Cavalier*, 297  
 6 F.3d at 822 (holding that "stock scenes and themes" must be "filter[ed] out and  
 7 disregard[ed]"); *Basile*, 2016 WL 5867432, at \*8 ("General themes such as human  
 8 origin and good-versus-evil are 'familiar stock themes' that may not serve as  
 9 grounds for substantial similarity."); *Rosenfeld*, 2009 WL 212958, at \*3 (holding as  
 10 unprotected such themes as "the importance of believing in oneself and following  
 11 one's dreams"); *Gallagher*, 2015 WL 12481504, at \*13 (holding theme of "horror  
 12 resulting from real people unknowingly being manipulated by third parties" to be  
 13 "generic and common themes [that] do not render the two works . . . similar").

14 Plaintiff alleges substantially similar themes on the basis that both *Looney*  
 15 and *Zootopia* purportedly address (i) "[w]hether, in a diverse society as represented  
 16 by different species of 'Zootopia,' one can be anything he or she wants to be . . .  
 17 [and] whether, in order to do so, one can overcome not only the prejudices inherent  
 18 in a diverse society . . . but also the prejudices within oneself as a member of such a  
 19 society," and (ii) "whether the societies can live up to utopian ideals and judge and  
 20 credit others fairly as individuals not as stereotypes, based on conceptions of merit  
 21 not natural order." (Compl. ¶ 54.) Although both works do in fact address  
 22 overcoming stereotypes and bias, these generic themes underlie countless stories  
 23 and are not protected by copyright law. *See Campbell*, 718 F. Supp. 2d at 1113  
 24 ("The Court finds that although the works share themes of self-reliance and the

25  
 26 <sup>7</sup> *Z100 Announces "Zootopia" Lineup*, ALL ACCESS (Apr. 3, 2007),  
 27 [https://www.allaccess.com/net-news/archive/story/23265/z100-announces-](https://www.allaccess.com/net-news/archive/story/23265/z100-announces-zootopia-lineup)  
 28 [zootopia-lineup](https://www.allaccess.com/net-news/archive/story/23265/z100-announces-zootopia-lineup) ("Zootopia was created in 1999 and has been held at various  
 venues in the tri-state area.").

1 importance of friendship and teamwork, these themes often predominate stories of  
 2 competition . . . and are thus generic and not protectable”). Also, *Zootopia* contains  
 3 another theme that is not present in *Looney* at all—*i.e.*, “try to make the world a  
 4 better place.” See *id.* (finding no substantial similarity where defendants’ work  
 5 contained “additional themes . . . absent from” plaintiff’s work).

## 6 5. Settings

7 Plaintiff claims that the works are substantially similar because they are set in  
 8 a “cartoon world made up of animated animal characters.” (Compl. ¶ 55.)  
 9 Specifically, Plaintiff alleges two main settings: (i) a “modern civilized” urban  
 10 environment where different animal species live and work, and (ii) a “small town”  
 11 suburban environment. (*Id.* ¶¶ 55–56.) Neither of these is specific enough to  
 12 warrant protection. The particular settings that Plaintiff claims are similar are either  
 13 fabrications or scenes-a-faire that “naturally and necessarily flow[] from the basic  
 14 plot premise.” *Cavalier*, 297 F.3d at 824. For example, Plaintiff alleges that the  
 15 settings in its *Looney* treatment and synopsis are substantially similar to those in  
 16 *Zootopia* because both “feature human-like physical environments with modern  
 17 civilized features rather than natural environments such as the wild, a forest, or a  
 18 jungle.” (Compl. ¶ 56.) Contrary to Plaintiff’s allegation, *Zootopia* depicts both.  
 19 In *Zootopia*’s Rainforest District environment, for example, rainforest animals live  
 20 in a natural forest that is modified by modern, civilized features.

21 Plaintiff further alleges that both *Looney* and *Zootopia* “have the protagonists  
 22 move back and forth between small towns where they grew up and the big city.”  
 23 (*Id.* ¶ 56.) Plaintiff fails to allege how the “small town” in *Looney* is similar to  
 24 Bunnyburrow in *Zootopia*. Nor can it. Plaintiff’s hero appears to be a human  
 25 character living in a real-life setting rather than a computer-animated town for  
 26 bunnies. Moreover, “small town” and “big city” are generic scenes-a-faire that  
 27 flow from the shared basic plot of an animated, anthropomorphic animal world.  
 28 *Cavalier*, 297 F.3d at 824.

1 Plaintiff also alleges that *Looney* and *Zootopia* are similar because they both  
 2 “have scenes at clubs with similar names, i.e., the ‘Mystic Spring Oasis; and the  
 3 ‘Watering Hole.’” (Compl. ¶ 56.) But the names of the clubs are completely  
 4 different and refer to different concepts. The “oasis” in *Zootopia* refers to a  
 5 naturalist club where the animals can relax or take a yoga class. Plaintiff does not  
 6 allege how the “watering hole” in *Looney* is similar. *See Campbell*, 718 F. Supp.  
 7 2d at 1114–15 (finding no substantial similarity between “desert” setting where  
 8 defendants’ story involved “a town . . . surrounded by a desert landscape” and  
 9 plaintiff’s story involved “the main character . . . literally lost in the desert”).

10 Finally, Plaintiff alleges that *Looney* and *Zootopia* both “have schools where  
 11 animals are taught biology and ecology . . . [and] institutional workplaces where the  
 12 heroes work.” (Compl. ¶ 56.) These settings are typical of urban and suburban  
 13 settings, and therefore flow from the basic unprotected premise of an animated,  
 14 anthropomorphic animal world. *See Williams v. Crichton*, 84 F.3d 581, 589 (2d  
 15 Cir. 1996) (holding that “electrified fences, automated tours, dinosaur nurseries,  
 16 and uniformed workers . . . are classic *scenes a faire* that flow from the  
 17 uncopyrightable concept of a dinosaur zoo”).

18 None of the general or specific settings that Plaintiff alleges to appear in  
 19 *Zootopia* support a claim of substantial similarity. Each of the settings in *Zootopia*  
 20 flows from the basic unprotected theme of animated animals living and working in  
 21 a modern civilized world. Moreover, though, the realization of several settings in  
 22 *Zootopia* is unique. Defendants conceived and built a vast, detailed world  
 23 comprising (among other places): (i) a downtown environment full of high-rise  
 24 buildings, (ii) a plaza environment at the center of *Zootopia*, (iii) a transportation  
 25 hub called Central Station that accommodates train travel for all animals, (iv) a  
 26 police station that is the command center for the entire police force, (v) a Sahara  
 27 Square environment that is hot and dry for desert animals, (vi) a Tundratown  
 28 environment where cold-weather animals live, and (vii) a Little Rodentia

1 environment with pint-sized buildings for small animals. (*See* Bloom Decl. Ex. A.)  
 2 All of these environments are fully developed, animated in three dimensions, and  
 3 appear only in *Zootopia*, none of them in *Looney*.

#### 4 **6. Mood and Pace**

5 Plaintiff fails to plead any substantial similarity of mood and pace. Plaintiff  
 6 lists generic similarities such as “humor” and “dark moments” with  
 7 “disappointment,” “disillusionment” and “sadness.” (Compl. ¶ 77.) This could  
 8 probably describe most movies. Plaintiff then asserts that the “pace changes with  
 9 the mood, sometimes exhibiting frenetic energy while other times slowing down”  
 10 for exposition. (*Id.*) This too could probably describe many if not most movies  
 11 ever made. These allegations are too general and devoid of specifics to support any  
 12 finding of substantial similarity.

#### 13 **7. Selection, Arrangement, and Combination of Elements**

14 Plaintiff complains that *Zootopia* “copies both individual elements, and the  
 15 selection, arrangement, and combination of elements” from *Looney*. (*Id.* ¶ 81.)  
 16 However, Plaintiff does not specify what those elements are. Nor has Plaintiff  
 17 attached its work to the Complaint showing similarity of the selection, arrangement,  
 18 and combination of any such elements. Plaintiff’s vague and unsupported  
 19 allegation cannot sustain this claim.

### 20 **V. PLAINTIFF IS BARRED FROM RECOVERING ATTORNEYS’** 21 **FEES AND STATUTORY DAMAGES**

22 Section 412 of the Copyright Act bars a plaintiff’s right to recover statutory  
 23 damages and attorney’s fees where the plaintiff failed to register the work prior to  
 24 commencement of the infringement. *See* 17 U.S.C. § 412(2) (“no award of  
 25 statutory damages or of attorney’s fees . . . shall be made for . . . any infringement  
 26 of copyright in an unpublished work commenced before the effective date of its  
 27 registration”). In the Ninth Circuit, infringement commences upon the occurrence  
 28 of “the first act of infringement in a series of ongoing infringements of the same

kind.” *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 701 (9th Cir. 2008). Plaintiff alleges that Defendants first began distributing and exhibiting *Zootopia* to the public in the United States on March 4, 2016—11 months before Plaintiff allegedly registered Goldman’s work on February 10, 2017. (Compl. ¶¶ 34, 45.) Because Plaintiff failed to register the work prior to commencement of the infringement, it is barred from recovering its attorneys’ fees and statutory damages. *Derek Andrew*, 528 F.3d at 699 (holding that “Title 17 U.S.C. § 412(2) leaves no room for discretion”).

## **VI. PLAINTIFF’S STATE-LAW CLAIMS FAIL AS A MATTER OF LAW**

Plaintiff asserts three claims under California law: (i) breach of implied-in-fact contract; (ii) breach of confidence; and (iii) violation of Cal. Bus. & Prof. Code § 17200 (UCL). (See Compl. ¶¶ 90–113.) To allege a claim for breach of implied-in-fact contract, Plaintiff must demonstrate that the works are substantially similar. See *Benay v. Warner Bros. Entm’t*, 607 F.3d 620, 631 (9th Cir. 2010). “The requirement of substantial similarity for implied-in-fact contract claims aligns this field with copyright infringement and also means that copying less than substantial material is non-actionable.” *Id.* In the Ninth Circuit and elsewhere, “[c]ourts have specifically rejected the contention that liability could be imposed on defendants on the basis of less than substantial similarities.” *Id.* The same is true with respect to a claim for breach of confidence. See *Aliotti v. R. Dakin & Co.*, 831 F.2d 898, 903 (9th Cir. 1987) (“To prevail on their claim for breach of confidence, appellants must show that . . . there was disclosure or use”).<sup>8</sup>

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<sup>8</sup> Plaintiff bases the Defendants’ UCL liability on the same conduct that allegedly supports its other claims. (See Compl. ¶ 111) (“By engaging in the conduct alleged above, Defendants have engaged in unlawful, unfair, and/or fraudulent business acts of unfair competition in violation of” the UCL). To the extent that Plaintiff’s UCL claim is derivative of its copyright infringement claim, it is preempted by federal copyright law. See 17 U.S.C. § 301 (“no person is entitled



1 In *Benay*, the Ninth Circuit affirmed summary judgment for the defendants  
 2 on the plaintiff's copyright infringement claim, but remanded the plaintiff's breach  
 3 of implied-in-fact contract claim to the District Court because it determined the two  
 4 works shared a number of concrete similarities. 607 F.3d at 631–32. For example,  
 5 the Court found persuasive the fact that both works: (i) featured “an embittered  
 6 American war veteran who travels to Japan where he meets the Emperor, trains the  
 7 Imperial Army in modern warfare, fights against the samurai, and in the end is  
 8 spiritually restored,” (ii) “rel[ie]d heavily on the historical figure Saigo Takamori,”  
 9 and (iii) “share the same title.” *Id.* at 632.

10 The similarities in this case are nothing like those in *Benay*. *Looney* and  
 11 *Zootopia* do not share the same title. Nor are they based on the same character or  
 12 story. *Zootopia* is a fully animated motion picture about a bunny cop and a con-  
 13 artist fox who partner to solve a missing-animal crime under a 48-hour deadline.  
 14 Plaintiff's work is a synopsis and treatment for a live-action picture about a human  
 15 animator and his work to complete an unfinished animation project. Plaintiff has  
 16 not alleged any concrete similarities between *Looney* and *Zootopia*. Because  
 17 *Zootopia* does not “use” Plaintiff's ideas or materials, Plaintiff cannot sustain its  
 18 state-law claims.

## 19 VII. CONCLUSION

20 For the foregoing reasons, this Court should dismiss Plaintiff's Complaint  
 21 with prejudice.

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 27 to any such right or equivalent right in any such work under the common law or the  
 28 statutes of any State”).

1 Dated: May 22, 2017

O'MELVENY & MYERS LLP

2  
3 By: /s/ Daniel M. Petrocelli  
4 Daniel M. Petrocelli

5 Attorneys for Defendants  
6 The Walt Disney Company, et al.  
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